IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Vahid @ Vikky @ Iqbal Vs. State of Rajasthan
(S.B. CRIMINAL JAIL APPEAL NO.284/2006)

2. Kabadi @ Ashok & Another Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.921/2005)

S. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 6-5-2004 in Sessions Case No.22/2003 passed by Sh. Vishnu Dutt Sharma, RHJS, Special Court (Fake Currency Cases) Jaipur City, Jaipur.

Date of Judgment: March 22, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Ms. Rajesh Kandwal, Amicus Curiae, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Kabadi @ Ashok, Vahid @ Vikky @ Iqbal and Irshad @ Yusuf, the appellants herein, were put to trial before Special Court (Fake Currency Cases) Jaipur City, Jaipur, who vide judgment dated May 6, 2004 convicted and sentenced them as under:-

Kabadi @ Ashok, Vahid @ Vikky @ Iqbal and Irshad @ Yusuf:
U/s.394 IPC:

Each to undergo rigorous imprisonment for seven years and fine of Rs.3,000/- in default to further suffer three months rigorous imprisonment.

U/s.397 IPC:

Each to undergo ten years rigorous imprisonment and fine of Rs.5000/- in default to further suffer six months rigorous imprisonment.

The substantive sentences were ordered to run concurrently.

2. The informant Mahaveer (Pw.5) submitted a written report at Police Station Sadar Jaipur on August 12, 2002 with the averments that around 9.45 PM on the said day Rajesh Kumar came to his dairy booth and collected amount of dairy booth in a bag. While Rajesh Kumar proceeded from the booth some miscreants armed with knives way led him. The miscreants inflicted knife blows on his person and snatched money-bag. One of the miscreants, who had money bag was caught hold on the spot and on being enquired he disclosed his name as Kabadi @ Ashok. On that report case was registered under section 394 IPC and investigation commenced. After usual investigation charge sheet was filed against the appellants. In due course the case came up for trial before the Special Court (Fake Currency Cases) Jaipur City, Jaipur. Charges under sections 394 and 397 were framed against the appellants. The appellants denied the charges and claimed trial. The prosecution in support of its case examined as many as 15 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. I have heard learned counsel for the parties and with their assistance weighed the material on record.

4. Injured Rajesh Kumar Vasistha (Pw.) vide injury report (Ex.P-11) received following injuries:-

> 1. Stitched wound of size 3cm just below to right eye over zygomatic region, there is blackening of Rt.eye with swelling of

both eye lids, conjunctival congestion
2. Incised wound of size 4.5cm present over Lt. earpinna upto Lt. mastoid region 0.18cm width & through & through wound fresh bleeding present.
3. Incised wound of size 4.5cm x 2cm x cavity deep on Rt. side abdomen
4. Incised wound of size 15cm x 2.5cm x muscle deep on Rt. side abdomen posterior transversely placed.
5. stitched wound of size 5.5cm over dorsum of Rt. hand
6. Incised wound of size of 3cm x 0.5cm x muscle deep on Rt. thigh.
7. Incised wound 5.5cm x 2cm x muscle deep lt. thigh.
8. Incised wound 3.5cm x 1.5cm x muscle deep Lt. thigh.
9. Incised wound 5cm on Rt. leg
10. Incised wound on Rt. leg.

5. Injured Rajesh Kumar (Pw.1) supported the version narrated in the FIR. In his deposition Rajesh stated that on August 12, 2002 around 9.30- 9.45 PM while he was returning from the shop of Mahaveer after collecting money in a bag, he was way led by miscreants who were armed with sharp edged weapons and knives. They made assault on him and robbed the bag that contained sum of Rs.87,872/-. The miscreants caused as many as 10 injuries on his person. Hearing his hue and cry Mahaveer and other neighbours of colony caught hold of Kabadi @ Ashok. He identified other assailants in Identification Parade before Magistrate. Testimony of Rajesh Kumar gets corroboration from the evidence of Rakesh (Pw.7), Mahesh Goyal (Pw.4) and Mahaveer Khatiwal (Pw.5).

6. Factual situation emerges from the material on record may be summarized thus:-

(i) Rajesh Kumar Vasistha was assaulted for the purpose of

robbing the amount which he collected from dairy booth.

(ii) One of the miscreants along with the robbed bag was caught hold of by the public on the spot itself.

(iii) Witnesses identified the accused in the Identification Parade held in presence of Magistrate.

7. In the backdrop of the testimony of witnesses, I proceed to consider the evidential value of identification parade. Their Lordships of the Supreme Court in Abdul Waheed Khan @ Waheed Vs. State of A.P. (2002) 7 SCC 175 indicated thus:-

> "Identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eye witnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code of Criminal Procedure,1973 and the Evidence Act. It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there

is no scope for making such allegation. If, however, circumstances are beyond their control and there is some delay, it cannot be said to be fatal to the prosecution."

8. In Dana Yadav alias Dahu Vs. State of Bihar (2002)7 SCC 295, it was held as under:-

> "Identification parade are held during the course of investigation ordinarily at the instance of investigating agencies and should be held with reasonable dispatch for the purpose of enabling the witnesses to identify either the properties which are the subject matter of alleged offence or the accused persons involved in the offence so as to provide it with materials to assure itself if the investigation is proceeding on right lines and the persons whom it suspects to have committed the offence were the real culprits."

9. In Jayawant Dattatraya Suryarao Vs. State of Maharashtra (2001)10 SCC 109, their Lordships of the Supreme Court propounded thus:-

> "Substantive evidence of a witness is his evidence in court. Identification parade is not primarily meant for the court but is meant for investigation purpose. It serves two purposes, namely, to enable the witness to satisfy that the prisoner whom he suspects is rally the one who was seen by him in connection with the commission of the crime and for satisfying the investigation authority that the suspect is the real person whom the witness had seen in connection with the said occurrence. In case when the evidence is cogent, consistent and without any motive, it is no use to theoretically imaging that as the witness has seen the accused for a few minutes it would be difficult for him to identify. It always depends upon one's capacity to recapitulate what he has seen earlier. Power of perception and memorising differs from man to man and also depends upon the situation. Finally, appreciation of such evidence would depend upon the strength and trustworthiness of witnesses."

10. Principles that may be deduced from the aforequoted

pronouncements may be summarised thus:-

(i) Identification tests do not constitute substantive evidence. They can only be used as corroborative of the statement in court.

(ii) The main object of holding an identification parade during the investigation stage is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eye witnesses of the crime.

(iii) In order to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade and it is desirable that a test identification parade should be conducted as soon as after the arrest of the accused.

(iv) Appreciation of such evidence would depend upon the strength and trustworthiness of witnesses.

11. Coming to the facts of the instant case I notice that the injured was assaulted by the appellants for the purpose of robbing the amount which the injured collected from dairy booth and one of the miscreants Ashok along with the bag belonged to injured, was caught hold of by public on the spot. The witnesses correctly identified the appellants in Test Identification Parade held in presence of Magistrate as well as in the trial. Evidence of injured and other witnesses could not be shattered in the cross examination and the evidence is cogent, consistent and trustworthy. I do not see any infirmity in the impugned judgment.

12. For these reasons, the appeals being devoid of merit stand dismissed. Conviction and sentence awarded to appellants under sections 394 and 397 IPC are maintained.

(Shiv Kumar Sharma)J.

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